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The Los Angeles Bar Association BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

CRIMINAL LAW AND PROCEDURE

"TAKE THE WITNESS"

LAW REPORTING IN CALIFORNIA

INSTRUCTIONS TO THE JURY

INHERITANCE TAX ACT REFORM

THE LAWYER AND THE FUTURE

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Criminal Law and Procedure

Final Report of 1932 Committee Submitted to Trustees. Many Changes Recommended.

THE COMMITTEE ON CALIFORNIA LAW AND PROCEDURE, appointed in 1932, has just made a comprehensive report to the Board of Trustees. It makes many important recommendations. The Board approved of all of the recommendations except Item 13, which treats of Section 1089 Penal Code, relating to alternate jurors. The report recommends an amendment to permit the Court to impanel one or more additional jurors, so that in a case which possibly may extend over a long period of time, a sufficient number of alternate jurors may be selected to insure the ultimate submission of the case to the jury; also, recommends an amendment so as to permit a Court to excuse a regular juror and substitute an alternate if good cause appears therefor.

The Committee's report expresses serious concern with the attitude of certain of our Superior Court judges in refusing to admit defendants to bail on appeal in ordinary felony cases, except upon a showing of injury to the health of the defendant arising from continued incarceration. The Committee strongly urges that under Section 1272 P. C. the discretion of the Court should be exercised to admit a defendant to bail on appeal, except in cases of conviction of murder or some other unusually heinous offense, without the necessity of a showing that the defendant's health would be impaired from continued incarceration. It calls attention to the fact that defendants are admitted to bail as a matter of course on appeal from conviction in the Federal Courts, and, so far as they were able to ascertain, upon conviction in all other Superior Courts in the State of California, and generally throughout the United States.

Accompanying its recommendations which are set below, the Committee submitted drafts to effect the amendments of the various sections of the Codes, specified under the various items in its report.

Mr. Byron Hanna was Chairman, and Mr. Edward L. H. Bissinger Secretary, of the Committee. The other members were: Daniel Beecher, Thomas L. Ambrose, Philbrick McCoy, Phil S. Gibson, Charles W. Fricke, Percy V. Hammond, William LaPlante, Thomas P. White, Tracy Chatfield Becker.

The report and recommendations follow:

Item 1. Section 1881 Code of Civil Procedure and Section 1322 Penal Code.

These sections relate to evidence of confidential communications between husband and wife. At present in a criminal case a husband or wife can only testify against the other where the defendant is accused of a crime committed by one against the person or property of the other. This should be amended so as to authorize the husband or wife to testify against the other in a criminal case involving a crime committed against a third person while engaged in committing, or connected with the commission of a crime by one against the other.

Thus, if a husband assaults his wife with a deadly weapon and in the course of the affray injures a third person, the wife should be a competent witness in a prosecution against the husband. As the law now stands, the wife could not testify in such case.

Item 2. Section 2047 Code of Civil Procedure

This section restricts the medium with which a witness may refresh his memory to a memorandum or document written by himself or under his direction. The section should be amended so as to permit a witness to refresh his memory from any book, document or *object* whenever it shall appear to the satisfaction of the Court that in the nature of events his memory would thus be refreshed. Many times the memory of a witness may be logically and actually refreshed by writings or objects other than those now enumerated in the above section. The section should be amended in the particulars above set forth.

Item 3. Section 3479 Civil Code

This section of the Civil Code defines a nuisance. The succeeding section defines a public nuisance, adopting the definition in this section. At common law, a nuisance included anything which was immoral, as well as indecent or offensive to the senses, etc.

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The Lawyer and the Future

OUT OF THE CONFUSION of the great national business and financial crisis which now touches and colors the lives of every one of the people, great changes are likely to come.

It is not unreasonable to predict that the public will be increasingly disposed to measure and evaluate human virtues as against strictly material considerations. It will turn for advice and guidance to those who have kept the faith.

The organized American bar—national, state and local units—which for years has carried on a quiet, continuous and constructive campaign to promote and improve the administration of justice; to clean its own ranks of the unfit, and to inform the public of the true functions of an honorable profession, will emerge even stronger and more respected.

The fruits of the unselfish devotion of thousands of its members to the highest ideals of the profession; to a sincere determination to guard and protect the interest of the public, and to the able, honest and fearless administration of the law, are nearer realization than we had reason to expect.

Truly it has been said of the profession:

> "Amid the vicissitudes and fortunes of our political life for a century and a half, members of the bar have been the leaders of constructive thought and action in the nation."

If Section 3479 were amended so as to include anything that is immoral, it would permit proceeding against gambling houses by injunction to enjoin their operations as a public nuisance. We think, therefore, that the section should be amended so as to insert after the word "indecent," "or is immoral," so that the section will read, "anything which is injurious to health, or is indecent, or is immoral, or offensive to the senses, etc., is a public nuisance."

Item 4. Section 3480 Civil Code.

This section defines a public nuisance as one which affects at the same time an entire community or neighborhood or any considerable number of persons.

We think this section should be amended so as to extend the definition of public nuisance to embrace conduct involving a multitude of violations of the law, or repeated, successive or continued and persistent violations of the law.

If such an amendment could be secured, it would obviate the necessity of the amendment to Section 3479 Civil Code, and would effect a valuable contribution to law enforcement. There are many cases presenting courses of conduct involving innumerable and continued violations of the law, in which law enforcement could be more effectively accomplished by injunction than by prosecution for violation of the statutes involved. There is no reason why one who maintains an establishment in which the law is continually and persistently violated should not be enjoined from so doing, or who engages in a course of conduct involving repeated and persistent violation of the law should not be so enjoined. To require the state to proceed by separate prosecutions involving a multiplicity of actions creates unnecessary expense, and frequently is ineffective in suppressing the violation of the law.

The first object of law enforcement should be to secure obedience to the law. If that object can be better accomplished by injunction proceedings, there is no reason why the Court should not be authorized to extend such remedy. To illustrate the present argument, reference may be made to *People v. Seccombe,* 103 Cal. App. 306, which was an action to enjoin defendant from conducting the business of a usurer. It was shown that the defendant was engaged in transacting business involving continual violation of the law. The Court, however, held that on account of the limited definition of a public nuisance, an injunction could not be granted. In such a case and in the case of gambling houses and other cases of similar nature, law enforcement would be greatly assisted by the amendment here proposed.

It should be made clear that this amendment does not purport to extend the remedy to restrain a single violation of the law. It is only directed at a course of conduct of such a nature as to be in fact a public nuisance, even though not defined as such as the law now exists.

Item 5. Section 136½ Penal Code (New Section)

Section 136 of the Penal Code makes it a misdemeanor for any person to wilfully prevent or dissuade any person from becoming a witness upon a trial. This is not sufficiently severe in cases of bribing a witness to depart from a state or bribing a witness to absent himself from a trial.

Section 137 relates to bribing witnesses, but has been held to apply only to a person who has been actually called as a witness. We think a new section should be added to the Civil Code to apply to the case or bribing any person who is or may become a witness, to abstain from attending any trial, and providing a punishment not exceeding five years in the state prison or in the county jail not exceeding two years, or a fine of Five Thousand Dollars, or both such fine and imprisonment.

Item 6. Section 182 Penal Code

The punitive paragraph of this section should be amended so as to read that a conspiracy to commit any felony shall be punished in the same manner as provided by law for the commission of such felony, and a conspiracy to commit any other act described in the section shall be punished by imprisonment in the state prison or county jail not exceeding two years, or by a fine not exceeding Five Thousand Dollars.

As section 182 now reads and as construed in the case of *Doble v. Superior Court,* 197 Cal. 556, those who conspire to commit a felony are punishable in the same manner as the felony is punishable. Those who conspire to commit a misdemeanor injurious to the public health or public morals or tending to pervert or obstruct justice, or the due administration of the law, the punishment for which misdemeanor is prescribed by the Penal Code, are guilty only of a misdemeanor and subject to the same

punishment, whereas those who conspire to commit any other misdemeanor are guilty of a felony.

The consequences of this provision are extremely absurd, as a conspiracy to commit any misdemeanor not defined by the Penal Code constitutes a felony, while a conspiracy to commit any of the misdemeanors defined by the Penal Code, and generally those are the most serious misdemeanors, constitutes only a misdemeanor.

Item 7. Section 375 Penal Code

This section relates to throwing or depositing of offensive substances in places of assemblage. Offenses involving the use of stink bombs and other nauseous or offensive substances placed in places of business and stores have become very frequent of late in relation to racketeering activities. At present such offenses are punishable only as misdemeanors. This section should be amended so as to make such offenses punishable by imprisonment for not more than five years in the state prison or two years in the county jail, or by a fine not exceeding Five Thousand Dollars, or by both such fine and imprisonment.

Item 8. Section 518 Penal Code

This section defines extortion as obtaining property from another with his consent induced by wrongful use of force or fear, or under color of official right. The section should be extended so as to embrace the influencing of an official act of a public officer by wrongful use of force or fear. The law denounces bribery of a public official as a felony, but contains no provision reaching the man who seeks by intimidation or threats to influence official action.

Recent cases have been presented involving threats of proprietors of scandal sheets to publish libelous articles concerning public officials unless such officials acted in accordance with the demand of the person making the threat. Such conduct should be denounced within the terms of the definition of extortion.

Item 9. Section 520 Penal Code

This section prescribes the penalty for extortion and at present provides that it shall be punished by imprisonment in the state prison not exceeding five years. The section should be amended so as to provide as alternatives imprisonment in the county jail not exceeding five years or fine not exceeding Five Thousand Dollars, or both such fine and imprisonment, so as to give the Judge a wider latitude of discretion in administering punishment for this offense.

Item 10. Section 790 Penal Code

This section at present provides that jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county and the party injured dies in another county, or out of the state, is in the county where the injury was inflicted. The section is defective as applied to modern conditions. If the offense of murder or manslaughter were committed in an airplane traveling over several counties in the state, it might be utterly impossible to prove venue. It should be amended so as to provide that jurisdiction of such offenses shall be in the county in which the injury was inflicted or in which the body was found, and to avoid questions of locating exact boundary lines of counties, it should contain the additional provision that when the body was found within 500 yards of a boundary line between two counties, jurisdiction should be in either county.

Item 11. Section 821 Penal Code

Under the provisions of Section 821, Penal Code, a defendant arrested upon a warrant issued by a magistrate upon the filing of a complaint can furnish bail only before the magistrate issuing the warrant, or a magistrate of the same county, from which the warrant was issued, whereas under the provisions of Section 984 Penal Code, a defendant arrested upon a warrant issued upon the filing of an indictment may furnish bail before a magistrate in any county.

Section 821, Penal Code, should be amended so as to follow the same procedure as specified in Section 984, Penal Code, and permit a defendant wherever arrested in the state to furnish bail before a magistrate of any county in the state. There is no reason for the inconsistency of these sections, and the opportunity to furnish bail should be extended to the defendant with the least inconvenience to the defendant.

Item 12. Section 995 Penal Code

This section prescribes the conditions under which an indictment or information must be set aside, but does not provide that an information may be set aside where the

(Continued on page 204.)

"TAKE THE WITNESS"

A New Book Dealing With the Life of Earl Rogers, California's Spectacular Criminal Lawyer. Many Celebrated Los Angeles Murder Trials Discussed.

Reviewed by Ewell D. Moore, of the Los Angeles Bar

ONCE IN A GREAT WHILE, out of the many attempts, in book and picture, to dramatize the personalities and procedure of the courtroom, comes a story that merits attention, and furnishes rich reading entertainment, particularly for lawyers.

Such is "Take The Witness."

(*By Alfred Cohn and Joseph Chisholm, writers, authors of "Gun Notches." Publishers, Ray Long and Richard Smith, Inc., New York.*)

A foreword by Adela Rogers St. Johns, famed novelist and daughter of Earl Rogers, touching in sentiment, and frank in its analysis of the dynamic and picturesque Rogers, prepares the reader for the vivid life story of a great criminal lawyer whose forensic adventures, over a score of years, took place largely in Los Angeles.

"Once in a while," in the language of the graphic foreword, "comes a man who intrigues and fascinates public imagination, who dazzles his associates, who gains a hold upon the memory of all who knew him. Such a man is well worth reading about."

The authors have taken the life and trial records of Earl Rogers and produced a book of much interest. One might say it is a book essentially for lawyers, were it not universal in its human interest appeal. It pictures, in dramatic fashion, Rogers' handling of many of the more or less celebrated criminal trials that took place in Los Angeles during the early years of the present century; of a time when the now great city was suffering its first "growing pains"; when the native Californians, and the descendants of the real pioneers were more charitable in their judgment of their fellowmen; of a time when there still lingered traces of the romantic and picturesque West; of easy going goodfellowship.

No Hero Worship

There is no attempt at hero worship. While the book is all about Rogers and his career as a criminal lawyer, the authors do not hesitate to portray his shortcomings; his periodical lapses from the more rigid moral code which regulates the conduct of the present day practitioner. It is more than frank in its recital of Rogers' weaknesses, as well as fair in its estimate of his exceptional qualities—personal and professional.

It is said of Rogers that he was too sure of his ability, knowledge of law and resourcefulness before a jury, to admit the necessity of questionable tactics. The authors furnish opinion evidence by many who knew Rogers, in the courtroom and out, as well as trial incidents to lend weight to this conclusion. Certainly, he was one of the most daring, brilliant, resourceful and spectacular courtroom figures that ever appeared before the bar in California. As to whether he was a *great* lawyer, opinions will differ. No one will deny that he was successful. The authors quote Clarence Darrow as saying that Rogers was the greatest jury lawyer of his time.

The Darrow Trial

Incidentally, Rogers' defense of Darrow, who was charged with having bribed jurors in the celebrated case of the McNamara brothers, tried for dynamiting the Los Angeles Times, furnishes one of the most thrilling chapters of the new book. It contains incidents and revelations never before published, according to the book.

Throughout the book, in almost every criminal trial in which Rogers played a leading part, are woven the names of many California lawyers—some of whom have passed from the scene; others—many others—who are still active in the courtrooms of Los Angeles. They, too, played important roles in the stirring trial dramas that earned for Rogers the reputation of a bold, picturesque courtroom behaviorist and successful criminal lawyer.

There are interesting facts about famous trials in which Stephen M. White engaged—he whose statue stands in the grounds of the old Courthouse, and in whose office Rogers made his start as a law student; of Henry T. Gage, once Governor of California, and a lawyer of ability; of C. C. McComas, the brilliant old-time prosecutor, and many of the younger lawyers who have since become outstanding figures in California courts.

"THE DESTRUCTION OF A PROFESSION"

It is more than passing strange that Rogers, who has not been credited with having displayed particular interest in the welfare of the legal profession, should have written, with great care, in 1917, a document almost prophetic in its terms, which he called "The Destruction of a Profession," and filed it among his papers. There it was found, after he passed on, by his former associate, Jerry Geisler, who gave it to the authors. It is printed in the book.

This review can give no more than a few brief paragraphs of this document. After calling attention to the time when the minister was the foremost citizen well enough informed to advise, followed by the lawyer who was regarded as someone apart from the ordinary run of people, the article says, in part:

"The legal profession is about to be disposed of and relegated to the limbo of things unneeded. This is not altogether so because of the general dissemination of knowledge, nor because the average man of today is quite as well educated as is the attorney or counsellor, whom he formerly looked up to.

"The conditions of modern business life have eliminated the lawyer. He has gone as much as the horse has disappeared from our city streets. He is no longer needed.

"Today in every well-regulated community there is an abstract and title insurance company which employs clerks, a few lawyers or many, which gives certificates of title, which insures the validity and rectitude of such titles. The purchaser deposits his money in escrow with this company and it is delivered to the seller upon the discovery by that company that it can issue a certificate of clear title to the purchaser. No lawyer is consulted, and no lawyer's opinion is asked. No lawyer's activities are deemed necessary. This one system has filched from the profession fully a quarter of its business.

"Whenever there is an accident in the ordinary city there descends upon the scene a swarm of 'ambulance-chasers,' so-called 'claim-adjusters,' who, not being lawyers themselves, solicit—this is an exceedingly mild word to express the performance—the cases of all those injured, promising recoveries and no expense to the unfortunates, there being paid to the claim adjuster a commission for his valuable services in securing payment for such injuries as may exist No reputable lawyer will employ these men, but I am safe in saying that ninety percent of the prosecution of damage cases is committed to these claims agencies, who employ some few cheap attorneys to handle them. The ethical lawyer declines to compete.

"So the defense and prosecution of accident cases has largely been eliminated from the lawyer's business.

"In the matter of estates of deceased persons, there is even a greater destruction of professional activity. Only a few years ago, every man went to his lawyer and had his last will and testament drawn and prepared for submission to the court after his death, usually appointing his wife or some near relative as executor and relying upon his attorney for advice as to the disposition of his affairs and concerns after his death. Today, in practically every city in the country, whether large or small, every trust company, every bank, advertises to draw wills without compensation for such drafting, providing the trust company is named executor of the estate. No reputable lawyer will advertise in such a way, but these companies announce themselves ready to draw wills without cost to the testator.

"As a member of the faculty of a law school, I look over the thousand or so young men who are struggling to enter upon the legal profession, and I wonder what they are going to do to make a living. I know that not one lawyer in fifty is making money in the honorable and legitimate practice of his profession. I know that only a small percentage of them are making a living, and that the remainder are either stealing or starving to death.

"No lawyer can advertise, yet trust companies and all such organizations advertise to do the work of the lawyer. If a lawyer should advertise, forthwith he should be disbarred, and yet we hear of no effort on the part of the profession to prevent legal business from being monopolized by these concerns.

"There remains to the ethical lawyer today but a small portion of the practice he could expect a few years ago. About all a self-respecting attorney can do today is to take what is left over after these other concerns get through taking the best of everything. The profession stands by and watches its business being filched from it—and does nothing. Courts which promptly would disbar an advertising lawyer, smile a welcome upon the clerk who appears for a powerful trust company in a probate matter."

Law Reporting in California Discussed in Report of Bar Association Committee

THE SPECIAL COMMITTEE ON LAW REPORTING of the Los Angeles Bar Association has made a report to the Board of Trustees in which it presents suggested changes to reduce the cost of advance sheets and the shortening of the lag between the rendering of decisions and the publication of reports.

The report follows:

I.

In accordance with a contract with the state which expires October 27, 1934, the price of the official reports is $2.85 per volume. From 1914 to 1921 the price was $1.65, despite the fact that several hundred volumes were delivered gratis to the state.

The Committee is of the opinion that the question of manufacturing costs should be investigated so that the bid in 1934 will truly reflect the downward trend of costs with a resulting substantial saving to the Bar.

Advance Sheets

II.

The price of the Advance Sheets is too high. Unlike the publication of the official reports, the publication of the Advance Sheets is purely a private matter, but touched, however, with a public concern.

It would appear to be good business at this time for the publisher to help the Bar cut its overhead by reducing the price of the Advance Sheets, or have Bancroft Whitney and the Recorder Printing & Publishing Company make an attractive combination offer to subscribers, or, all efforts failing to secure cooperation, have the Advance Sheets included in the publication contract for 1934. The latter course would practically eliminate the present duplication of printing, distribution and reportorial work, and should result in a saving of time and money.

The Committee is of the opinion that there is no connection between the Recorder Printing & Publishing Company and Bancroft Whitney; that the official reports are not purposely held up in order to promote the sale of Advance Sheets, and that the syllabi in the Advance Sheets, although prepared by Randolph Whiting, the official reporter, is not the same as that appearing in the official reports. The Committee in making the last suggestion is not unmindful of the useful role that the Advance Sheet plays nor of the service rendered by the Recorder.

Shortening Delay of Publication

III.

At the present time the lag between the rendering of the decisions and the publication of the Supreme Court reports is eleven months, and that of the Appellate Court reports nine months. This lag can be considerably shortened by amending the Constitution, Article VI, Sections 16 and 21, and Sections 771 to 782 of the Political Code, and clothing the Supreme Court with power to provide for the publication of reports and its decisions, and as incidental thereto, the power of appointing reporters, regulating their number and salaries, and the question of reading proofs and correcting decisions for publication.

At the present time the Constitution provides for the number and salaries of the reporters, and limits the number to three assistants. The Political Code fails to provide a time limit for the various steps that intervene between the date of the rendering of the decision and the date when the corrected proof is handed to the publisher. Under rule of court, the system would be flexible instead of rigid as at present.

Despite an undermanned staff, Randolph Whiting assures us that he hopes to catch up with the Appellate Courts in the very near future.

Although at first blush the question appears to be without the scope of the Committee, nevertheless it impinges upon the question of costs, i. e. the matter of writing memoranda instead of written opinions by the Appellate Courts. If the method pursued in the New York and Federal Courts is adopted it will mean a reduction in the number of volumes and space for housing them, with a resulting saving to the Bar.

Uniform Pagination

IV.

In the very nature of things, there is bound to be a lag between the date of the rendering of the decision and its appear-

ance in final form. The Advance Sheet, therefore, serves a useful function in filling the gap, but it is not an unmixed blessing because of lack of uniformity in pagination of the Advance Sheets and official reports. The practice in our state of granting rehearings in both the Appellate and Supreme Courts, and in many instances reversing the original decision and never giving it official publication, apparently militates against uniform pagination of the Advance Sheets, which contain all of the decisions, and the bound volumes, which contain selective decisions. In view of the fact that the rehearing rule, which necessitates a wait of thirty days in the Supreme Court and sixty days in the Appellate Court, is also one of the causes for holding up the publication of the bound volumes, we are calling attention of the Bar to the situation, as calling for a more extended study, with the view to its possible modification.

The situation, however, is not hopeless, as is evidenced by the fact that sixteen states have uniform pagination. This Committee was appointed December 15, 1932, and has not had time to investigate the methods used in these states, but is of the opinion that it would be worth while to make such a survey in the near future. In the meantime Frank L. Holt of the Municipal Court has been attempting to bridge the gap by publishing in the Los Angeles News from time to time comparative tables of Advance Sheets and official reports. Judge Charles A. Fricke has offered the following practical suggestions:

a. There should be a publication of tables of comparative citations as soon as the bound volumes come out, showing the name, the Advance Sheet citation, then the bound volume citation, similar to Shepard's table of cases.

b. The last volume of the California Appellate Reports is Volume number 123, which represents cases appearing in Volume 69, California Appellate Decisions. Why could not the publisher of the Advance Sheets step up the volume numbers so that the present Advance Sheets would be fifty higher and then change the volume numbers when enough material had accumulated to make up a permanent volume. While this would not give us the page or the exact volume in the permanent reports, it would enable us to guess within a volume or two of the permanent volumes where the case could be found.

c. Instead of the present numbering of the Advance Sheets, the volumes should consist of the last two numbers of the year, followed by number 1 for the first three months, number 2 for the second three months, etc.—as for example, our present Advance Sheets would bear Volume No. 33-1, covering cases from January 1st to April 1st, 1933, and Volume No. 33-2, covering cases from April 1st to July 1st, 1933, etc.

The foregoing problems are not novel ones. The State Bar grappled with them from 1921 to 1927. The Report of the first Committee in 1921 was a voice crying in the wilderness. It is the hope of this Committee that the cry was not in vain.

Respectfully submitted,

WINIFRED M. ELLIS,
FRANK MERGENTHALER,
GEORGE W. ROCHESTER,
MAURICE SAETA, *Chairman.*

CORRECTION: In the February issue of THE BULLETIN, under the heading "Sharpshooting at The State Bar," President Crump of the State Bar was quoted as follows: "In the words of a San Francisco Assemblyman, who has not always been a friend of the State Bar, but who *professes* a considerable amount of common sense," etc.

President Crump used the word *"possesses"* and not "professes." THE BULLETIN hastens to apologize for this typographical error which escaped the eyes of the editor and the alert proofreader.

Instructions to Jury Under Sec. 2061 C C P

By Emmet H. Wilson, Judge of the Superior Court

Section 2061 of the Code of Civil Procedure provides that the jury are the judges of the effect and value of the evidence addressed to them, and that "on all proper occasions" they are to be instructed by the court upon subjects specified in said section.

The decisions of the higher courts are in disagreement as to whether instructions in the language of subdivisions 4, 6 and 7 of said section should be given at any time, when the "proper occasion" arises for the giving of the same, and whether such instructions are harmless error, or reversible error, or any error.

The cases arising under these subdivisions are here assembled. The rulings are variant and contradictory. The prudent and discreet trial lawyer will pause before requesting an instruction upon any of these subjects, lest he discover, at the termination of an appeal, that he did not choose a "proper occasion." It is safer to assume that such occasion is ever non-existent.

Subdivision 4, by its terms, authorizes an instruction "that the testimony of an accomplice ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution." It will be more convenient to consider this subdivision under two headings, one relating to testimony of an accomplice, and the other to oral admissions. Subdivisions 6 and 7 will be considered together.

1. Testimony of an Accomplice Viewed With Distrust. (Sub. 4.)

Where a witness testifies in behalf of the prosecution it *may* be proper to give the instruction, but where the witness is for the defendant such instruction tells the jury in effect to discredit ("distrust") the testimony of defendant's witness. (*People v. O'Brien*, 96 Cal. 171.)

Where the only evidence to justify conviction was the testimony of an admitted accomplice, and that of a third person as to defendant's oral admissions, the refusal to give the instruction is prejudicial error. The principle on which it was held error to give the instruction in *People v. O'Brien* made it error to refuse the same in this case. (*People v. Bonney*, 98 Cal. 278.)

The instruction should be given on *proper* occasions. (*People v. Strybe*, 4 Cal. Unrep. 505; *People v. Sternberg*, 111 Cal. 11; *People v. Silva*, 121 Cal. 668.)

The failure of the court to give the instruction was not reversible error under the circumstances of this case. (*People v. Funtas*, 41 Cal. App. 408.)

Where the accomplice was called as a witness against defendant, and defendant did not request the instruction in question, the court said it would have been well for the trial court, on its own volition, to have given the instruction, but under the circumstances of the case the failure so to do was not prejudicial. (*People v. Rose*, 42 Cal. App. 540.)

Subdivision 4 is unconstitutional and an instruction in the language of the same is a charge as to a matter of fact. (*Hirshfield v. Dana*, 193 Cal. 142, in which many preceding cases are reviewed; *People v. Blanchard*, 71 Cal. App. 402; *People v. Hendricks*, 71 Cal. App. 730; *People v. Jones*, 87 Cal. App. 482.)

2. Evidence of the Oral Admissions of a Party Viewed With Caution. (Sub. 4.)

This is only an inference of fact which must be made by the jury. It is not a presumption or a conclusion of law to be declared by the court. It is an argument with respect to matters of fact and a comment on the weight to be given by the jury to the testimony. (The instruction here is not in the language of the code and contained matter in addition to that authorized by subdivision 4.) (*Kauffman v. Maier*, 94 Cal. 269.)

In an action against the administrator of an estate, where defendant introduced evidence of oral admissions of plaintiff and this was the only evidence which defendant could produce, it was error to give an instruction at the request of plaintiff that evidence of oral admissions of a party should be received with caution. It was in disparagement of the only evidence by which defendant could meet plaintiff's testimony. (*Mattingly v. Pennie*, 105 Cal. 514.)

The instruction is unobjectionable in law and should have been given. (There is no reference in this case to other cases *contra*.) (*People v. Sanders*, 114 Cal. 216.)

An instruction similar to that in *Kauffman v. Maier,* held to be an encroachment upon the province of the jury, but as it was given at defendant's request he could not complain. (*People v. Van Horn,* 119 Cal. 323; *People v. Rodley,* 131 Cal. 240.)

This instruction ought rarely, if ever, to be given in criminal cases, as it is an attempt to deal with the weight and effect of evidence. (*People v. Cuff,* 122 Cal. 589.)

Subdivision 4 Unconstitutional

An instruction in the language of subdivision 4 was held in the first opinion to have been harmless, and either the giving or refusing of the same held not to warrant a reversal. On rehearing, however, the subdivision was declared to be unconstitutional. (*People v. Wardrip,* 141 Cal. 229, 233.)

The instruction contains merely commonplace and the giving or refusing of the same does not constitute ground for reversal. (*People v. Tibbs,* 143 Cal. 100; *People v. Raber,* 168 Cal. 316; *People v. Maljan,* 34 Cal. App. 384; *People v. Martinez,* 57 Cal. App. 771.)

Held not error to refuse defendant's instruction which went beyond the language of the code, approving *Kauffman v. Maier.* (*People v. Buckley,* 143 Cal. 375; *People v. Middleton,* 65 Cal. App. 175.)

In one case four justices followed the *Wardrip* case, holding the subdivision unconstitutional, two justices held it proper to give the instruction in the language of the code but not to go beyond the same, and one justice held it a "mere commonplace" and the giving or refusing of the same would not warrant a reversal. (*People v. Moran,* 144 Cal. 48.)

Twenty-five days after the *Moran* case was decided five justices joined in holding that a refusal to give the instruction was not error, citing the *Wardrip* case, but not the *Moran* case. One justice dissented and withdrew his approval of the *Wardrip* case. (*People v. Ruiz,* 144 Cal. 251.)

Such instruction, applying to admissions of the defendant, if conceded to be erroneous, is favorable to him and could not have harmed him. (*People v. Hill,* 1 Cal. App. 414.)

Refusal Mere Commonplace

The subdivision is unconstitutional, as a charge upon matters of fact, but the act of giving or refusing the instruction would not justify a reversal, as it is a "mere commonplace." (*Goss v. Steiger,* etc., 148 Cal. 155; *People v. Hewitt,* 78 Cal. App. 426.)

An instruction that "statements" made by defendant out of court (not "evidence" of such statements) are to be received with caution is not authorized by this subdivision. (*People v. Muhly,* 11 Cal. App. 129.)

As to the conflict of this subdivision with the constitution, several cases are cited and the court says that those cases also take the view that such instruction is harmless. The court states that possibly the Supreme Court will hold that such instruction not only violates the Constitution but is also prejudicial to the defendant, but the court declined "to anticipate or to forestall such a decision." (*People v. Davenport,* 13 Cal. App. 632.)

It is clear that subdivision 4 is unconstitutional, but the giving or the refusal of it as an instruction will not be held to be prejudicial error, because it is a mere commonplace. However, as it is settled law that the subdivision is unconstitutional it should never be made the basis of an instruction. (*Hirshfeld v. Dana,* 193 Cal. 142, 160.)

3. Evidence Estimated According to That Which It Is in the Power of One Side to Produce and the Other to Contradict. (Sub. 6.) If Weaker or Less Satisfactory Evidence Is Offered When Stronger and More Satisfactory Is Within the Power of the Party, the Same Should Be Viewed With Distrust. (Subdivision 7.)

In criminal cases it is best that subdivisions 6 and 7 should not be noticed, as they generally trench upon the constitutional rights of defendant, and they attempt to deal with the weight and effect of evidence. (*People v. Cuff,* 122 Cal. 589.)

Instruction in language of subdivisions 6 and 7 reversible error where defendant failed to testify or to introduce evidence in denial or explanation of testimony of prosecution. (*People v. Charles,* 9 Cal. App. 338.)

It must appear clearly that the occasion was not a proper one, but that the instruction was misleading and injurious before the court would hold it erroneous. Here defendant asked for the instruction as applied to certain evidence. The court did not give the instruction as requested but read the subdivisions. Defendant having invoked these principles of law cannot complain that it was not a proper occasion. (*People v. Reuf,* 14 Cal. App. 576.)

Held to be error, but not prejudicial error, to give an instruction in language of subdivisions 6 and 7, where there was no evidence justifying it or to which the instruction could apply. (*Lawyer v. L. A. Pac. Co.*, 23 Cal. App. 543; *Wilson v. Crown Transfer Co.*, 201 Cal. 701.)

The suggestion in the *Cuff* case as to the inadvisability of giving subdivision 7 in a criminal case is applicable to civil cases. There is no more reason for holding it harmless when the existence of a proper occasion for giving it is questioned, than that it should be held error always to give it because it may invade the province of the jury. Error cannot be insisted upon unless it appears to have been prejudicial error to the party complaining. (*Brown v. Sharp-Hauser Cont. Co.*, 159 Cal. 89, 95.)

The giving of an instruction in the language of subdivisions 6 and 7, with an instruction that the failure of defendant to testify should not be considered as evidence against him, held not to be error. The court stated that in view of the admonition in the *Cuff* case they "infer that the instruction found its way to the jury by inadvertence. But this fact cannot lessen the prejudicial effect it may have had upon the jury." However, Article VI, Section 4½, of the Constitution is applied and judgment affirmed. (*People v. Carroll*, 20 Cal. App. 41.)

In discussing the weight of certain evidence, the court stated that the defense would have been entitled to an instruction following subdivision 7. This statement is *dictum*, as the instruction was not requested or given. (*People v. Reid*, 193 Cal. 491.)

The giving of an instruction in the language of subdivisions 6 and 7 held not to be error where there was no doubt of defendant's guilt and he was not prejudiced. The court says that the trial court should have obeyed the admonition in the *Cuff* case, and if the case were one on which minds might reasonably differ as to guilt, it might well be argued that the instruction influenced the verdict. (*People v. Trinidad*, 198 Cal. 728.)

Reform In Inheritance Tax Act

Amendments to Probate Code and Inheritance Tax Act Urged by Bar Association Committee

A comprehensive set of amendments to certain sections of the Probate Code and of the Inheritance Tax Act, designed to effect several very necessary reforms in the Inheritance Tax Appraisers' situation, has been prepared by our Inheritance Tax Committee, for presentation at the present session of the Legislature, and every lawyer in this County should endorse these amendments and vigorously urge their adoption at the present session of the Legislature. These amendments, which have received the approval of Judge Crail and of our Board of Trustees, are as follows:

AN ACT

To amend Section 14 of an act entitled "An Act to be known as the 'Inheritance Tax Act', to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed; to provide penalties for failure to comply with the provisions of this act; and to repeal chapter five hundred eighty-nine of the laws of the session of the Legislature of California of 1917, approved May 23, 1917, known as the 'Inheritance Tax Act', and to repeal all acts and parts of acts in conflict with this act," approved June 3, 1921, as amended.

The People of the State of California Do Enact as Follows:

Section 1. Section 14 of an act entitled "An act to be known as the 'Inheritance Tax Act,' to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed; to provide penalties for failure to comply with the provisions of this act; and to repeal chapter five hundred eighty-nine of the laws of the session of the Legislature of California of 1917, approved May 23, 1917, known as the 'Inheritance Tax Act,' and to repeal all acts and parts of acts in conflict with this act," approved June 3, 1921, as amended, is hereby amended to read as follows:

Section 14. The State Controller shall appoint one or more persons in each county of the State to act as inheritance tax appraisers therein, provided, however, that each such appointment must be confirmed by the judge presiding in the probate department of the Superior Court of the county in which such appraiser is appointed to act, said judge being hereinafter referred to as the presiding probate judge, or by the presiding judge of such Superior Court if there be no such presiding probate judge. Each such appointment by said Controller must be in writing directed to and filed with the clerk of the county in which such inheritance tax appraiser is appointed to act, and shall become effective only when said judge shall have certified to said county clerk in writing his approval thereof. In the event that said controller and said judge cannot agree as to appointment of such appraiser, then upon application of either of them in writing to the Chairman of the judicial council of the State of California he shall make any such appointment required to be made. Each inheritance tax appraiser heretofore appointed by the State Controller and qualified to act as such at the effective date of this act and/or appointed after the effective date of this act shall hold office until removed therefrom by the written order of the State Controller and such probate or presiding judge, or in the event of their disagreement regarding such removal, upon written order of said chairman of the judicial council made upon application of said Controller or said judge; such written order of removal shall be directed to and filed with the clerk of such county in which such appraiser is appointed to act, and such removal shall be effective as of the date of filing thereof. One appraiser may be appointed to act in two or more counties and such appraiser need not be a resident of the county in which he acts. The total annual compensation which each of said appraisers shall receive shall be fixed by said Controller but shall not exceed the amounts provided

for in the schedule hereinafter set forth, said compensation to be paid to him out of the "Inheritance Tax Appraisers' Fund" hereinafter referred to, and in the hands of the treasurer of the county in which he is acting. Each said appraiser shall also receive out of said Fund an allowance for his expenses on order of the presiding probate judge, or if there be none such, upon order of the presiding judge of the Superior Court of said county, on approval of the State Controller. If there be insufficient monies in said inheritance Tax Appraisers' Fund to pay such compensation and such allowances for expenses, then upon order of the presiding probate judge, or if there be none such, upon order of the presiding judge of the Superior Court of said county, the Treasurer of said county shall transfer from any inheritance tax monies in his hands a sufficient amount to pay such compensation and such allowances for expenses. At the end of each state biennial period, any part or all of the monies in said Inheritance Tax Appraisers' Fund may upon order of such judge and State Controller and Chairman of the Judicial Council, or any two of them, be transferred from such fund by the county treasurer to be placed with other inheritance tax monies in his hands.

Upon the filing of the inventory and appraisement, the executor or administrator shall pay to the county treasurer into a fund designated the "Inheritance Tax Appraiser's Fund" an appraisal fee in accordance with the following schedule:

Appraised value of estate

Up to $10,000.....10/100 of 1%

On excess from $10,000 to $40,000 5/100 of 1 %

On all excess of $40,000.....2/100 of 1%

No estate shall pay more than $250 maximum appraisal fee.

Any person who shall have been appointed to act as Inheritance Tax Appraiser, who shall ask for, receive or agree to receive any fee or reward in connection with the performance of his duties as such Inheritance Tax Appraiser other than such as may be allowed him by law shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison not less than one or more than ten years.

For the purpose of regulating the compensation of all Inheritance Tax Appraisers, the several counties of this state are hereby classified according to their population ascertained and determined in Sections 4005 (c) and 4006 of the Political Code of the State of California, and the total annual compensation which shall be fixed by said controller for each of said appraisers in the respective counties shall not exceed the amounts provided for in the following schedule:

Counties of the First, Second and Third Classes, Five Thousand Dollars ($5,000) each.

Counties of the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Classes, Three Thousand Dollars ($3,000) each.

Counties of the Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, and Twenty-first Classes, Eighteen Hundred Dollars ($1800) each.

Counties of the Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, and Thirtieth Classes, Twelve Hundred Dollars ($1200) each.

Counties of the Thirty-first, Thirty-second, Thirty-third, Thirty-fourth, Thirty-fifth, Thirty-sixth, Thirty-seventh, Thirty-eighth, Thirty-ninth, Fortieth, Forty-first, Forty-second, Forty-third, Forty-fourth, Forty-fifth, Forty-sixth, Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, Fifty-first and Fifty-second Classes, Six Hundred Dollars ($600) each.

Counties of the Fifty-third, Fifty-fourth, Fifty-fifth, Fifty-sixth, Fifty-seventh, and Fifty-eighth Classes, Two Hundred Forty Dollars ($240) each.

AN ACT

To amend Section 605 of the Probate Code relating to Appointment of Appraisers.

The People of the State of California Do Enact as Follows:

Section 1. Section 605 of the Probate Court is hereby amended to read as follows:

605. To make the appraisement the Court or judge must, at the time of appointing the executor or administrator, designate or appoint one of the inheritance tax appraisers provided for by law, which designation or appointment shall also be for the purpose of fixing the inheritance tax as provided in Section sixteen of the Inheritance Tax Act. Such appraiser shall complete and return the appraisement within thirty (30) days after delivery by the executor or administrator to him of the inventory, or within such further time as the court, for good cause shown and upon application either of the executor or administrator or of the appraiser, after notice to the other, shall allow. Said court or judge may at any time designate or appoint one of said Inheritance Tax Appraisers to make a re-appraisement of any property of the estate, and said re-appraisement shall be completed and returned within a period of thirty (30) days after said appointment and no additional appraisal fee shall be incurred in connection therewith.

AN ACT

To amend Section 609 of the Probate Code relating to fees of appraisers.

The People of the State of California Do Enact as Follows:

Section 1. Section 609 of the Probate Code is hereby amended to read as follows.

609. Upon the filing of the inventory and appraisement, the executor or administrator shall pay out of the estate to the county treasurer into a fund designated "Inheritance Tax Appraisers' Fund" an appraisal fee in accordance with the following schedule:

Appraised value of estate

Up to $10,000.....10/100 of 1%

On excess from $10,000 to $40,000 5/100 of 1%

On all excess of $40,000.....2/100 of 1%

No estate shall pay more than $250 maximum appraisal fee.

(Continued from page 190.)

evidence at the preliminary examination fails to show that a crime has been committed, or that there is reasonable cause to believe that the defendant is guilty thereof. It should provide for this condition as a ground for setting aside an information.

As the procedure now obtains, when the evidence at the preliminary examination is insufficient, a defendant who is incarcerated after being held to answer, may petition for writ of habeas corpus and secure his liberty and determination of the proceeding under these conditions. A defendant admitted to bail has no remedy and can only obtain a remedy by being surrendered and incarcerated and a writ of habeas corpus obtained. There should be a direct remedy by motion to dismiss the information, and Section 995 should be amended accordingly.

Item 13. Section 1089 Penal Code

This section relates to alternate jurors and authorizes the Court to direct the calling of one or two additional jurors. This should be amended to permit the Court to impanel one or more additional jurors, so that in a case which possibly may extend over a long period of time, a sufficient number of alternate jurors may be selected to insure the ultimate submission of the case to the jury.

This section also permits the Court to use one of the alternate jurors only in the event that a juror dies or becomes ill so as to be unable to perform his duty. It should be amended so as to permit the Court to excuse a regular juror and substitute an alternate if good cause appears therefor.

In a recent case, after the case had been on trial for several days, one of the jurors announced in open court that since evidence had been produced the juror was reminded of the fact that the juror had heard of the case before and formulated a definite conclusion upon the issues. In such event the Court should be permitted to excuse such juror and substitute one of the alternates.

Cases not infrequently arise where some member of a juror's family becomes dangerously ill or dies, or some other exigency arises, making it inhuman to require the continued attendance of such juror in the trial. Under such circumstances the Court should have authority to substitute one of the alternate jurors.

Item 14. Section 1181 Penal Code

This section specifies the grounds upon which a new trial may be granted in a criminal case. It does not specify misconduct of the District Attorney as a ground for granting a new trial, although such misconduct is a ground for reversing cases on appeal, and cases are not infrequently reversed on appeal on account of such conduct.

The trial court should have power, where such misconduct is urged, to grant a new trial and avoid the expense and delay of an appeal, and the section should be amended accordingly.

Item 15. Section 1183 Penal Code (New Section)

Under present procedure facts extraneous to the record pertinent to grounds for motion for a new trial may be proven only by affidavit. Not infrequently it occurs that a witness in a position to give such facts declines to make an affidavit and there is no method of compelling the witness to make such affidavit. Also there is no opportunity afforded of cross-examining any witness who makes an affidavit, irrespective of what facts may be set forth in the affidavit.

A new section should be added to the Penal Code providing that upon hearing of a motion for a new trial, any material fact may be shown by affidavit or the oral testimony of any competent witness, or by any other competent evidence.

Item 16. Section 1203a Penal Code

There is no law providing for the granting of probation upon the imposition of punishment for misdemeanors. Our Municipal Courts have frequent occasion to grant probation in such cases and it frequently happens that in the Superior Court a plea of guilty will be accepted to a misdemeanor charge. In any such cases the Court should have power to grant probation and the terms of probation should not be limited by the term of punishment which may be inflicted for the misdemeanor.

A new section should be added to the Penal Code providing that courts having jurisdiction to impose punishment in misdemeanor cases shall have the power to grant probation and to extend the term of such probation for a term not to exceed two years.

Item 17. Section 1238 Penal Code

This section prescribes the conditions under which an appeal may be taken by the People. Such an appeal may be taken from an order setting aside the indictment or information. The section, however, does not provide that the People may appeal from an order or judgment dismissing the case for insufficiency of the evidence made at the time of the trial.

Thus, it is within the power of any Judge, upon motion of the defendant, to dismiss a case, and the People have no remedy. The section should be amended so as to give the People a right of appeal from an order or judgment dismissing a case on account of insufficiency of the evidence.

The question of jeopardy might arise upon a second trial of the case, where the order is made by the Judge without the request or motion of the defendant, although competent authority holds to the contrary. We are of the opinion, however, that where the defendant moves for such an order or requests such an order, he could not thereafter enter a plea of jeopardy in the second trial of the case.

We think that the amendment of this section in the manner suggested is wholesome and conducive to efficient and honest administration of the law.

Item 18. Section 1368 and Section 1370 Penal Code

Section 1368 provides that if at any time during the pendency of a criminal action, up to and including the time when the defendant is brought up for judgment, a doubt arises as to the sanity of the defendant, the Court must order the question as to his sanity to be submitted to a jury. It should be amended so as to authorize the Court in such case to submit the question of sanity of the defendant to a trial by jury or, if a jury is waived by counsel for both parties, to a trial by the Court. The mandatory requirement of submitting this issue to a trial by jury multiplies expense and frequently requires a jury trial where both parties would prefer a trial by a Judge, and should be permitted to have such trial. This section should be so amended.

To make the Code provisions harmonious, it is necessary also that Section 1370 of the Penal Code, which controls the procedure after a trial of the present sanity of the defendant, be also amended so as to contemplate a trial by the Court, as well as by a jury.

Item 19. Section 1382 Penal Code

This section provides that a prosecution must be dismissed unless an information is filed within fifteen days after the defendant has been held to answer. It should be amended to read thirty days as the Courts have held that the provision as to time is directory and in addition to that the period of fifteen days is frequently insufficient within which to permit the filing of an information.

This section also provides that the case shall be dismissed if it is not brought to trial within sixty days after the finding of the indictment or the filing of the information.

Cases not infrequently arise where the defendant flees the jurisdiction after being held to answer, or for some other reason is not available, either for arraignment or trial within a period of sixty days after the finding of the indictment or the filing of the information. The section should be amended so as to make the sixty day period run from the time of the arraignment of the defendant.

Item 20. Section 1449 Penal Code

This section relates to the pronouncing of judgment in Justice's or Municipal Courts, and provides that judgment must be pronounced not less than six hours nor more than two days after the verdict is rendered. These provisions of the section are impracticable of application and by reason of necessity are constantly violated.

The section should be amended so as to correspond with the provisions of Section 1191 of the Penal Code relating to pronouncing judgment in the Superior Court, and providing for extending the time for pronouncing judgment where a motion for a new trial is interposed, so as to afford opportunity for hearing such motion. The section should be amended accordingly.

Item 21. Section 1, Deadly Weapon Act

We have two statutes dealing with deadly weapons, Act 1970 of Deering's General Laws relating to ordinary deadly weapons and Act 1971 of Deering's General Laws relating to machine guns. Strange to say, the Penal provisions of the first act are more stringent than the penal provisions of the second act.

Under the provisions of Section 1, of the ordinary deadly weapon act (Act 1970) a violation thereof is a felony punishable in the state prison not less than one nor

more than five years, whereas under the provisions of the act relating to machine guns (Act 1971) a violation is punishable by imprisonment in the state prison not to exceed five years or by a fine not to exceed Five Thousand Dollars, or by both such fine and imprisonment.

Frequently a great hardship arises under the provisions of Section 1 of the deadly weapon act by reason of the inelasticity of the penal provisions thereof, as the Court has no jurisdiction to administer misdemeanor punishment.

The act should be amended so as to provide that a violation thereof shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not to exceed two years, or by a fine not to exceed Five Thousand Dollars, or by both such fine and imprisonment.

Item 22. Section 1 of Act Providing for Disposition of Exhibits Filed With Court.

Act 1909 of Deering's General Laws provides for the disposition of exhibits filed with the Court in criminal cases, and Section 1 thereof authorizes the return of exhibits other than documentary, belonging to the defendant, to the defendant under certain circumstances. It has been found as a matter of practice that in some instances the very implements with which the crime was committed have been returned to the defendant and necessarily so under the provisions of this section.

The section should be amended so as to provide that dangerous or deadly weapons, poison drugs, explosives, or other substances, or tools, or implements used in the commission of the crime may be disposed of by order of Court and not returned to the defendant.

Preparation and Introduction of Bills

Pursuant to the authorization with reference to Items 1, 10, 11, and 21, bills have been prepared to accomplish the recommendations embraced in these items and forwarded to Senator McKinley for introduction in the Legislature.

It became apparent approximately ten days ago that this committee would not be able to complete its work in time to render its report and secure action thereon by the Trustees, in time to secure the introduction of bills at this session of the Legislature to effect such of the additional recommendations above set forth as may be approved, and after conference with President Robert P. Jennings of the Los Angeles Bar Association, bills were also prepared embracing the recommendations contained in all of the items above recommended, with the exception of Items 12 and 18, and such bills were forwarded to Senator McKinley, with the request that they be provisionally introduced so that there will be a bill pending before the Legislature embracing any or all the recommendations that the Trustees may approve of.

The bills to carry into effect Items 12 and 18 were not prepared in sufficient time to secure their introduction in the Legislature, but the bills representing these items have been prepared.

There is, therefore, presented herewith a complete draft of the bills covering all of the items or recommendations numbered 1 to 22 inclusive, hereinbefore presented.

Recommendation as to Bail on Appeal

Our committee is seriously concerned with the attitude of certain of our Superior Court Judges in declining to admit defendants to bail on appeal in ordinary felony cases, except upon a showing of injury to the health of defendant arising from continued incarceration. We feel most strongly that under the provisions of Section 1272 of the Penal Code the discretion of the Court should be exercised to admit a defendant to bail on appeal, except in cases of conviction of murder or some other unusually heinous offense, without the necessity of requiring a showing on the part of the defendant of impairment to defendant's health resulting from continued incarceration.

Defendants are admitted to bail as a matter of course on appeal from a conviction in the Federal Courts, and so far as we have been able to ascertain, upon conviction in all other Superior Courts in the State of California and generally throughout the United States.

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